Supreme Court, U.S.
FILED

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No._____

In the

Supreme Court of the United States

STEPHEN M. HICKEL,

Petitioner

v.

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD,

Respondent

On Petition For Writ Of Certiorari To The Court of Appeals of Michigan

PETITION FOR WRIT OF CERTIORARI

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in pro per

34 pp

QUESTIONS PRESENTED

This petition is about the State of Michigan Courts' and tribunals' failures to review specific infringements to the Right to Bear Arms for security of self and a free state and the lack of a post-deprivation remedy further impeded by legislative changes (App. F, *infra*, pg 13-41) that took place to a pistol license during this same period. It is about all manners of infringements, from the license to carry a concealed pistol to the specific restrictions on that license. (App. E, pg. 11, and F, pages 12-40, *infra*.) and taking 10 months to issue any license (App. H, pg. 42, I, pg. 43, K, pg. 51-54, L, pg. 55-56 , N, 60-61, and Q, pg. 76-78, *infra*.).

The Appellate Court of the State of Michigan upheld that the restrictions on carrying a pistol only merited an abuse of discretion review, used rational basis scrutiny, and denied that the US 2nd Amendment had any bearing on the questions[1], because in a footnote they said that it didn't apply to the states (App. A, *infra*., pg 1-5). They asserted that the Petitioner did not prove in Summary that the bearing of an arm, a pistol, in a concealed manner, for security of self and state were elements of nor did those merit consideration as to what constituted the right to bear an arm for security of self or a free state (App. A, Pg. 2, *infra*.). The Petitioner sued the Respondent because he said that the right to bear arms was not subject to restrictions by the state unless they were compelling state interest and ones that did not violate the safer society doctrine, to wit: society is safer when law-abiding citizens bear arms for the security of a free state. Since the Respondent (App. E, pg. 11) -- consisting of mostly police officers -- issued him a license with restrictions, he was not completely denied his right, merely restricted. At issue, is the gun as a

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[1] Footnote 1 of the MI Court of Appeals order, dated 31 January 03,"The Second Amendment of the federal constitution does not apply to the states. People v Swint, 225 Mich App 353, 359-360; 572 NW2d 666 (1997)."

constitutionally protected weapon, specifically the bearing of a pistol and the state non-compelling restrictions that are applied to that right via a license and the nature of any post-deprivation remedy affected by subsequent changes of state law – which dramatically affected his right – that came into play during the suit and all appeals.

US v Cruikshank, 92 U.S. 542 (1875)[2], was written at a time of slavery and referred to 32 counts, two of which referred to the bearing of arms, as they pertained to slaves' civil rights. Yet this one case has had serious ramifications on the Right to Bear Arms (RKBA), even today. Now it comes to this Court, in a time of a great national debate over the meaning and effect of the Right to Bear Arms, as to whether the right, which pre-dated two Constitutions, does extend to the State citizen directly or through another amendment.

Since the State of Michigan has taken a position to regulate the bearing of a gun commonly used by ordinary citizens in their daily lives for the security of self and the state (App. F, pg. 12-40), the below questions address the extent to which the State of Michigan courts and tribunals and legislature infringed (or could infringe) the Federal Constitutional right and their own explicit right (See App. Q, pg. 77-79, *infra)*. The Michigan courts upheld that the right could be restricted by a license and restrictions applied to licenses but failed to look at the individual restrictions to that license or the license itself. The above raises substantial questions that warrant review by this Court:

1 Whether the US Second Amendment has individual and substantive supremacy over the bearing of an arm in the State of Michigan as applied to the Petitioner and the People?[3]

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[2] This case was cited and followed by Presser v Illinois, 116, US. 252,265 (1885)

[3]Christopher PENCAK, Plaintiff, v. CONCEALED WEAPON LICENSING BOARD FOR the COUNTY OF ST. CLAIR; No. 94-73073, United

A. Whether the right to keep and bear arms claim -- guaranteed by a state and federal constitution -- had warranted a de novo review and assignment of a higher scrutiny than applied by Michigan Tribunals?

B. Whether a license controlling the bearing of pistol was a compelling state interest that passed constitutional muster in general or as applied to the Petitioner?

C. Whether specific restrictions of a license raised herein (but not limited to the below) were compelling and constitutional and whether the state proved such? Specifically, the following:

Gun-free zones.
Expiration and renewals of licenses
Non-violent misdemeant exclusions
Retired police officer unequal entitlements
Requirement to disclose possession on police stop
Right limited to just banking and business purposes?
Fingerprinting
Background checks
Disclosure of mental health and health records
Fees for applications and fingerprinting
Board of majority law enforcement interview

States District Court, E.D. Michigan, Southern Division. Dec. 16, 1994. Plaintiff asserts that Defendants deprived him of his right to carry a concealed weapon guaranteed by the Second Amendment to the United States Constitution. Plaintiff's Second Amendment claim is not viable because the Second Amendment does not apply to the states. "The Second Amendment declares that it shall not be infringed, but this . .. means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the National Government. Presser v. Illinois, 116 U.S. 252, 265, 6 S.Ct. 580, 584, 29 L.Ed. 615 (1886).

Penalties for not-carrying license with gun
State and national park exclusions
Requirement to carry hunting license if not hunting
County by County gun boards
Requirement to disclose misdemeanor
Requirement to provide one or more references
Retention of license applications
Subject to orders or dispositions of App. F, (7)d, pg 21-28
Subjective determination of suitability by board
Suspension or revocations for other than felonies
Prevention of jury trial in loss or suspension
Transporting an unloaded pistol in trunk to other than home, repair shop, or business

D. Whether the Respondent, a board of primarily law-enforcement officers, was a proper tribunal to stand over and make determinations pertaining to a law abiding citizen's right to bear arms?

2. Whether the Respondent violated due process and equal rights clauses of the state of Michigan and US Constitutions?[4]

3. Since there was no post-deprivation remedy, whether the Respondent through its written policies and practices violated the Petitioner's Civil Rights as per 42 USC 1983 (App. U, pg.109-112, Respondent's Policy Manual, *infra*)?

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[4]At the threshold of any equal protection analysis, the court must determine the level of scrutiny or standard of review which is appropriate to the case at hand. Gould v. Grubb (1975) 14 Cal.3d 661. If legislation involves a fundamental right or affects a suspect classification, the statute is closely scrutinized and will be upheld only if it is necessary for furtherance of a compelling state interest. County of Los Angeles v. Patrick (1992) 11 Cal.App.4th 1246.

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

Stephen M. Hickel as a state of Michigan and US Citizen, a member of the militia and who is also a Captain in the United States Naval Reserve, the select Militia. He is a computer consultant by trade. The Kent County Concealed Weapons licensing Board – a quasi-judicial board, the Respondent, comprised of just law enforcement officers, the Sheriff, the County Prosecutor, and a Michigan State Police Officer, or their representatives.

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PETITION FOR A WRIT OF CERTERIORI

Petitioner Stephen M. Hickel, a Michigan and US Citizen, respectfully prays that a writ of certiorari be issued to review the judgment of the Michigan Court of Appeals, the 17th Circuit Court in Kent County, and the Respondent, one or all. In plain contravention of the requirements of the Constitution of the United States and the State of Michigan, the Michigan Court of Appeals and lower tribunals embarked on an ad hoc and post hoc below-standard review in the exercise of their judicial power, which appears to thwart the will of the people and the founding mothers and fathers of two Constitutions, as well as the considered judgments of the Committee on the Judiciary, US Senate, 97th Congress[5] and the Fifth Circuit Court of Appeal[6]. The bearing of an arm guaranteed directly by the US and State Constitutions and eschewed by the State of Michigan courts' and Respondent involves issues of the utmost federal importance.

OPINIONS BELOW

The MI 17th Circuit Court and the Court of Appeals order were unpublished and are reported on in the App. A-C, pg 1-8.

JURISDICTION

The judgment of the Court of Appeals of Michigan was entered on January 31, 2003. (See App. A, pg.1-5, *infra.*) The Michigan Supreme Court declined on order dated April 23, 2003 (App. B, Pg. 6-7, *infra.*). The jurisdiction of this Court rests upon 28 U.S.C. § 1257 and its own Court Rule 10 b and 10c. As this challenges a State laws constitutionality, 28 U. S. C. § 2403(b) may apply

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[5]Constitution and Subcommittee on the Constitution of the Committee on the Judiciary United States Senate 97th Congress, Second Session, Dated February 1982 The RKBA is an individual right.

[6] US v. Emerson, 270 F.3d 203 (5 th Cir. 2001), Cert. denied. The RKBA is an individual right.

The judgment below is "final" for purposes of this Court's jurisdiction under § 1257; indeed, it amounts to the entry of a permanent injunction against the Petitioner. Market Street Ry. Co. v. Railroad Comm'n, 324 U.S. 548, 551 (1945) (entry of injunction is "an effective determination of the litigation and not of merely interlocutory or intermediate steps therein"). If this Court fails to hear his writ, it would effectively squelch any appeal or action against a Michigan gun board because no restriction would ever warrant review, except the complete prohibition of the right. Licensing of a gun and bearing of guns and all restrictions hidden within the umbrella of licensing would never surface for a court's review, because as long as it is "not completely prohibited" it is subject to restrictions and apparently doesn't matter which ones. The license -- representing the Right of Reasonable Police Power (RRPP) -- became superior to the Right to Keep and Bear Arms (RKBA), as the Michigan Courts failed to breach the abuse of discretion standard or apply more than a rational basis to the license or its restrictions.

As demonstrated in App. G, pg. 41, J, pg. 44, K, pg. 51, N, pg. 60, O, pg. 61, P, 70, Q, pg. 76, and T, pg. 95, *infra*, petitioner expressly raised below the federal questions presented in this petition. In fact, he had to pay a lawyer thousands of dollars to prepare a document (App. O, pg 61-69 and S, pg. 80-93, *infra.*) he presented to the Respondent highlighting all the compelling reasons why the Respondent was violating his state, federal, and civil rights under 42USC1983. Accordingly, the Michigan Courts,' especially the Court of Appeals failure to address petitioner's federal claims, and its assertion that the 2nd Amendment doesn't apply to the states in footnote has raised as an issue on appeal, the constitutionality of Michigan's concealed weapon licensing laws and the license itself and is no barrier to review by this Court. "The issue of whether a federal question was sufficiently and properly raised in the state courts is itself ultimately a federal question, as to which this Court is not bound by the decision of the state

courts." Street v. New York, 394 U.S. 576, 583 (1969). See also Black v. Cutter Labs., 351 U.S. 292, 298 (1956) (this Court has a "duty to . . . determine for ourselves precisely the ground on which the judgment rests"). Accordingly, a state court cannot evade this Court's review by failing to discuss or deny federal questions in its opinion. Chapman v. Goodnow's Adm'r., 123 U.S. 540, 548 (1887) ("If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects a claim, but avoids all reference to it, is as much against the right . . . as if it has been specifically referred to and the right directly refused."). But the right was directly refused by all Michigan Courts, first by eschewing any application of the 2nd Amendment and then refusing to do a substantive review and applying a merely rational basis of any and all his questions in all tribunals. "Questions of Law are reviewed de novo on appeal."[7]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See App. D, *infra* for provisions.

JUSTIFICATION FOR A WRIT OF CERTIORARI

Prior to 1927, the State of Michigan did not use a license to prevent felons and proven mentally ill citizens from getting a license. Nor was a license needed to bear a pistol during the normal course of one's affairs.

The people believe the right to bear arms (RKBA) of the US Constitution is a personal right that would invoke a court's highest scrutiny and review, without such substantive review, there really is no right at all. The people have a right to know for the last time if what they believe is myth or reality. The lower tribunals were unable to consider the US 2nd Amendment as applying in any fashion or part to their duties, judgments, and rulings due to higher court precedents and judicial bias. The explicit Federal

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[7] People v Sierb ,456 Mich 519; 581 NW2d 219 (1998)

constitutional right was inconsequential to the state and even the state's own right was treated unlike 1st, 4th, 5th, and 14th amendment constitutional cases in which other substantial infringements have been raised and treated with de novo reviews and the strictest of scrutiny. The State of Michigan tribunals simply eschewed the right as inconsequential to any substantive review or scrutiny. Because the Petitioner was granted a license, his rights were not violated, they said. The invective is that any license and any restrictions to that license would have been appropriate. That is what they did, issued restrictions based on each applicant's "need for a license", a violation of equal protection. Yet, the Petitioner challenged the license and its restrictions before Michigan tribunals.

The license, in short, became a proxy of the right or practical application of the right; the Respondent, the courts all refused to do a de novo review of the restrictions and their impact on that right (App. S, pg. 80-93). The lower review standards and failure to address individual restrictions of a license and the license to attain a compelling state interest is likely to warrant the exercise this court's discretionary powers. The Petitioner went to the Michigan Supreme Court[8], who refused to hear his case because they were "...not persuaded that the questions should be reviewed..."[9] by them. The People have a right to know if the federally guaranteed RKBA applies to the states and what preferences a state governing body, court, or executive body should apply to that right. The lack of lower court cohesiveness and clarity exacerbated the dilemma now before this court. Reviewing the Petitioner's filing will aid the Supreme Court's jurisdiction over a state right that parallels one or more explicit federal rights.

The Respondent will argue that this case is moot, either because the Petitioner's license has expired or because he can just apply for and get the license that doesn't have the

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[8] MI Supreme Court Case No. 123302.

[9] Order of the MI Supreme Court dated April 23, 2003.

purpose restriction he sued under. But while he was suing against his only restriction, the legislature applied even more substantive ones to his license that also make the new license "more restricted" than his now-expired "restricted" license. In addition, the Petitioner holds that the expiration itself was unconstitutional that was as much up for review as any other restriction. These issues have escaped judicial review since 1927[10] and will continue to escape it because it took almost three years to adjudicate his original complaints. That was the term of the license. It would be impossible to review this matter as long as the right expires, which was one of the issues brought before the Michigan Supreme Court. It is not just the specific restriction of hunting & target and business & banking purposes before this court, but the nature of purpose, time, and place restrictions on the right itself. A license and its changeable nature make the right itself subject to legislative whim. The fees and requirements of a license and the punishment of non-compliance often keep the wary and the poor from taking a chance of exercising their rights or making it affordable. Gun-free zones that were not part of his original restrictions were applied to it while he was in appeal. Because his right expired, he must again succumb to fingerprinting and fees that disparately impacts him and the less fortunate and the poor[11] from being able to afford the right. This case remains valid.

STATEMENT OF THE CASE

UNDERLYING LITIGATION

In a process that took 10 months, the Petitioner, through the aid of his attorney, received a restricted license limited

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[10] This is the year that the first concealed weapons law came into effect in Michigan.

[11] Wealth is a suspect classification deserving of special scrutiny. See Douglas v. California (1963) 372 U.S. 353. The Supreme Court has ruled against wealth discrimination when fundamental rights would be conditioned on making payments beyond a person's means.

to just banking and business purposes. Once he finally received a license, he sued on the basis that the right was not limited to purpose, time, and place restrictions, specifically to hunting, target, banking, and business purposes. Except for a three-year expiration, there were no other purpose, time, or location restrictions on his license. When the new law passed that put additional restrictions on his license, he had to leave his pistol home because of his job that carried him into the "new" gun-free zones. When his license of three years expired, he had to hang up his gun because he could no longer afford the "right" to bear a pistol, risk the penalties of violation and the requirements of the new licensing law were unconstitutional and unlawful.

The Michigan Tribunals have held that because the Petitioner received a license, (hereinafter referred to as CCW license) his rights have not been completely prohibited, merely restricted. Therefore, he lost on all counts of his Writ of Superintending Control and his five motions for summary disposition.

The Michigan legislature's stated purpose of a CCW license was to prevent criminals and mentally ill from obtaining a license.[12] Logically, all non-mentally-ill and non-felons would therefore get a license (or be able to bear a gun for security of self and state). The legislature (in the new law), the Courts, and the respondent took the liberty to use and uphold licenses to additionally control all aspects of bearing of pistols and did so unequally. Such licenses became the right to bear guns; then the courts failed to review restrictions on the Petitioner's licenses. If a person can not bear a concealed pistol, they can not bear any gun for security of self because no other gun nor manner of bearing a gun would suit that purpose during one's daily affairs. The license not only enables the police to arrest felons for carrying a gun, it allows the police to arrest citizens for not having a license or carrying outside its

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[12] MI. Act 372, 1927, 28.421a.

scope. The license is outside the span of the state's legitimate interest in preventing felons and mentally-ill from obtaining a license. If a pistol cannot be born some of the time, it will not be available some of the time. A pistol born by law-abiding citizens is deterrence against crime and a tool of defense. There is no difference on a restriction to bear a pistol concealed or in the open. No sane person would bear a pistol in the open in urban areas for fear of arrest and a ample impact on their privacy. Open carry is a vexatious label. It invidiously keeps one from carrying a pistol. The legislature made it illegal to bear a pistol in a car without a license. Thus, without a license, there is no bearing of a gun for security of self and state. During appeal, the law changed, and gun-free zones got added to his license. During appeal, it expired. Before that he asked the Respondent to extend his license. They refused.

Because the Michigan Supreme Court decided to decline his case, and a post-deprivation remedy was not forthcoming he was again completely prohibited.

Michigan gun laws, gun licenses, and enforcement practices came to represent the right to bear a gun, by proxy. The state courts failed to review purpose, time, and place restrictions put on the right by licensing. The Appellate Court claimed "an abuse of discretion" review was appropriate despite precedent to the contrary.

PROCEEDINGS IN THE MI COURT OF APPEALS

The State Courts' Decisions

In the Circuit Court, five motions encompassed a wide variety of constitutional repugnancies to include the violations of his civil rights, equal protection, due process, and RKBA issues. (See App. H, pg. 42, I, pg. 43, K, pg. 51, L, pg. 55, M, pg. 57, and P, pg. 70). In a 45 minute hearing, Judge Buth ruled the Petitioner had a right, but because

he was issued a license, his rights had not been completely prohibited, merely reasonably restricted.[13]

The invective was that it didn't matter what the restrictions were, as long as he was issued a license. The record showed that the board issued 25 varieties of restricted licenses (App. S, pg. 80-93) that year, only one with the restrictions of the Petitioner's, and the judge ruled that because he got a license, his rights had been reasonably restricted. Because of the lower standards of review, he ordered that all motions for summary disposition in favor of the respondent. The Petitioner challenged the ruling on the basis that his original writ of superintending control had been ignored by the court and rewrote the 7-day rule to one that accounted for the writ (App. C, pg. 7 *infra*). The judge overruled the proposed order in favor of the original one.

So it was by the vague standard of the law under which he got his license, or by the application of a vague law, that a law enforcement board issued a unique license, restricted by purpose but not time or location. Macomb County did not practice this; they issued licenses without purpose, time, or location limitations (App. S, pg. 80-93). The Petitioner held that this practice was constitutionally repugnant. If the purpose was to use a license to prevent felons and known mentally ill persons from getting a license, how could a tribunal of mostly law enforcement officers decide who <u>needed</u> a license and then what restrictions to apply to that license? It put an administrative privilege ahead of two constitutional guarantees. It threw a microscope on the use of licensing to obtain any compel-

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[13] Circuit Court transcript, pg.32, Judge Buth said, "...And, of course, this entire case arises, Mr. Hickel, out of your essentially an appeal from the local licensing board. And you have a restricted rather than unrestricted license, which you want. I mean, this is based upon alleged violations of your constitutional rights...It is this court's opinion that, since your rights have not been completed [sic] prohibited under Michigan Statute 28.426 but only restricted, the counts...must fail."

ling state interest, if such licensing proves to allow such abuses.

Based on State v. Kessler, 289 Or. 359 (1980), elements of a constitutionally protected weapon, the Petitioner defined the elements of the constitutionally protected right to bear arms or full-time right to bear arms[14] (App. T, pg. 94). The Appellate court wrongly confused that to an absolute right. They affirmed the grant of a restricted license without reviewing restrictions. The record shows references to the summary judgment standard and the writ of superintending control. The Circuit Court ruled on the summary motions and not on the writ. The court disallowed the writ because the case was dismissed with prejudice under the five motions for summary. Yet the Court of Appeals made their decision under a review of the writ. They said, "This Court reviews a decision to grant or deny an order of superintending control for an abuse of discretion."[15] Then they intermix the standards for summary, "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." Summary Disposition is to see if there is any merit to go to trial or do a substantive review, which they failed to allow or do. Rather they dismissed *sua sponte* the entire matter of two constitutions on the basis that he "... failed to establish that the constitutional right to "keep and bear arms" is synonymous with an absolute right to carry a concealed pistol...." How could he prove it, if they did not review his constitutional claims? "...Therefore, the trial court improperly dismissed plaintiff's complaint for superintending

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[14] Full-time right was that right that existed when one was not a felon or proven-dangerous, had the reason of security of self and/or the free state, for a weapon that was commonly used for self-defense and thus constitutionally protected. The state did not have a compelling interest in further restricting the right, since the intent of the legislature regarding the CCW law was to prevent felons and dangerous persons from getting a license. Thus the right was controlled by the license.

[15] MI Court of Appeals order dated 31 January 03, page 1.

control because there was no genuine issue of material fact that plaintiff was not entitled to an unrestricted license to carry a concealed pistol." This is mixing standard of summary with the writ of superintending control – a confusing order.

Based on the State v. Kessler, 289 Or. 359, 614 P.2d 94, 95 (1980) the Petitioner defined the full-time right. The Michigan Courts ignored this compelling precedent. The elements of the full-time right were the pistol is an arm; the Petitioner is a law-abiding citizen; and the reason for the arm and license was security of self and a free state. Only compelling state restrictions that do not violate the safe-society doctrine would be suitable. The Court overlooked the protected elements of the concealed pistol license, therefore, they claimed, there is no fundamental right to bear a concealed pistol. In short, there is a right to bear an arm, of which the pistol is one. The Constitution does not impose the manner of bearing. Michigan law had made it a felony to carry a pistol in a car, in a state park, in gun-free zones, and concealed without a license. With his pre-new-law-license, there was no problem in carrying in those areas (except while in a hunting area without a hunting license and in state and federal parks), as long as the purpose restriction was followed.

The stigma of carrying in the open would prevent all but the staunchest gun advocate from bearing a pistol. The State made the license a necesity to carry a gun – thus relentlessly obstructing the right. The courts failed to find fault with this when challenged.

The elements of the questions were suppressed in favor of a narrow interpretation. Whether it was bias or a constraint of precedent of Cruikshank, supra. the court did not do a substantive review nor apply strict scrutiny to the constitutional questions. The license only served to subject a law-abiding citizen to a substantial abuse of Police Power. It is not enough to state that the right can be restricted without substantively looking at the restrictions. The Court of Appeals asserted, "Clearly, as repeatedly ac-

knowledged in legal precedent, this State has a legitimate interest in limiting access to weapons particularly suited for criminal purposes; thus, the right to bear arms is subject to the reasonable exercise of police power."[16]

The Appellate Court plays on words. They did not complete the full thought as meant by the precedent they cite. Properly stated, the phrase would have been, "...in limiting access to weapons particularly suited for criminal purposes by criminals." Since the Petitioner is not a criminal, there is no compelling state interest in limiting access to a pistol, concealed or otherwise, to those who have the right to bear an arm. No crime; no punishment. A licensing law is carte blanche to severely limit the right, especially where the restrictions of all laws surrounding the right will never surface for judicial review, which is precisely the matter here.

The Appellate Court upheld the practice that a board of all or predominantly law enforcement officers could decide who needed a license and who got what restrictions and the creation of a quasi-suspect class of retired police officers and judges who got different, less restricted licenses.

The Federal Issues were raised and ruled on below

In App. G, J, K, N, O, P, S, T, infra., the Petitioner raised the Federal Question before the Respondent and the Circuit Court. The letters he wrote (See App. I, K, L, M, and P, *infra*), the briefs he filed all contained explicit reference to the Federal questions of civil rights' violations under the equal protection clause, due process, and 2nd Amendment. In addition, he discussed the 2nd Amendment as applying to both the State Right to bear arms and to the Federal right as applied to the state.

Reasons for Granting Petition

The text of the Michigan and US Constitutions begin:

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[16] Ibid.

"... with a Declaration of Rights, a series of rights so basic that the founders accorded them a place of special privilege.[17] *The Court long ago noted the venerable role the Declaration plays in our tripartite system of government .... It is significant that our Constitution thus commences by specifying those things which the state government must not do, before specifying certain things that it may do. These Declarations of Rights . . . have cost much, and breathe the spirit of that sturdy and self-reliant philosophy of individualism which underlies and supports our entire system of government. No race of hothouse plants could ever have produced and compelled the recognition of such a stalwart set of basic principles, and no such race can preserve them. They say to arbitrary and autocratic power, from whatever official quarter it may advance to invade these vital rights of personal liberty and private property, 'Thus far shalt thou come, but no farther.'"*

At stake is the right of rights, the right of the people to be prepared, should the need arise, to defend themselves, their state, and their country.[18]. Infringements can only be of the most compelling of nature.

The RKBA is not limited to banking or business purposes or to open or concealed carry. The RKBA as applied to a US and State Citizen are mutually persuasive and interdependent. The RKBA is a matter of national and state security. The RKBA serves several protected benefits some of which are guaranteed by the US and State Constitutions. What makes the firearm and bullet-proof vest patentable and useable to society is the manner of being a deterrence (check and balance) against 1) Foreign enemy 2) Domestic Enemy 3) Tyrannical Government 4) common

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[17] Traylor v. State, 596 So. 2d 957, 963 (Fla. 1992).

[18] State v. Kessler, 289 Or. 359 (1980). See this case for the manner of breaking down the elements of the right and why a pistol is a protected weapon. The same logic applies to the person who bears a gun and the reason they bear it.

law criminal acts for which the use of deadly force is appropriate and legal, such as rape, kidnapping, attempted murder, armed robbery, etc. Also, the RKBA existed before the US and State Constitutions as a tool of utility for sports, food gathering, hunting, recreation, and similar legitimate uses such as staying proficient, manufacturing them, making and storing ammo, using shields to protect against projectiles, etc. These uses are as much of the guarantee as are the above enumerated checks and balances, because society and the individuals need weaponcraft and weapon-utility in order to stay proficient in the use of weapons.

Falling under the RKBA are weapons and shields, old and new, that serve the above legitimate uses applied to persons who normally enjoy privileges of citizenship. In the matter of war or attack by a foreign or domestic enemy, the people need to be able to respond in kind. Any weapon that can be kept in a home must not be limited to or hampered by devices or infringements that render them ineffective or give the enemy unfair advantage. For Tyranny, no weapon or shield can be restricted as to render it ineffective against Tyranny. For self-defense, no weapon or shield can be restricted so as to make it ineffective against common law threats. Weapons and shields serve cross-purposes and are not mutually exclusive across these boundaries. Weapons of utility for of sport, hunting, recreation cannot be rendered ineffective nor are weapons used for protection excluded from use in the utility area.

Because a weapon and shield held, owned, possessed by a person protected by the RKBA serves many cross purposes, the State's police power in reasonably regulating the use or possession of weapons and shields must be very narrowly construed so as to not render them ineffective, less efficient, nugatory, or otherwise infringe them. Any infringement may have unintended consequences. Such regulation must use acute caution to ensure a regulation doesn't harm or make ineffective or nugatory or infringe a protected use, person, or weapon or shield. Judicial strict

scrutiny applies as it does in First Amendment cases. The core test of a law or regulation regarding the RKBA, therefore, must always prefer the RKBA over the state's police power, except where a particularized finding of a threat serious enough to warrant the loss of that right such as in 1st Amendment cases. Strict Scrutiny and *de novo* review standards apply. The Michigan Supreme Court stated the following:

"...Certain individual liberty interests are protected against certain governmental actions, regardless of the fairness of the procedures used to implement them. The purpose of substantive due process protections is to secure the individual from the arbitrary exercise of governmental power. If a particular constitutional provision establishes explicit constitutional protection against a governmental behavior, that provision is the basis of the protection and a more generalized substantive due process protection will not be applied." [19]

I. Review Is Warranted Because the Michigan Court of Appeals Eschewed the Right to Bear Arms by not Reviewing the Basis of the Right How Licensing impacted Same.

This Court's review of the Michigan Court of Appeal's decision is warranted because it "decided an important question of federal law that has not been, but should be, settled by this Court . . . ." Sup. Ct. R. 10(c). This case presents important questions regarding the federal statutory and constitutional restraints on the ability of States and their entities to impose ad hoc and post hoc requirements on the bearing of an arm for the security of the person and a free state. It sheds considerable constitutional doubt regarding licensing as a proper means to prevent felons and dangerous persons from carrying a gun. It only serves to make one arrestable for not having a license – a license became a "keep-out-of-jail" permit. The decision conflicts

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[19] Ibid.

with precedents of this Court and the court of appeals regarding the scope of the First, Fourth, Fifth, Ninth, and Fourteenth Amendment protections for other fundamental rights. These questions are presented in the context of one of the hottest debates in our Nation's history – is the 2nd Amendment still valid and what does it protect? There is a profound national interest in ensuring the right to bear arms is protected as are other fundamental rights, particularly one that is the ultimate check and balance, deterrence, a final means of security. This is precisely the type of question that the Nation justifiably expects this Court to decide. Indeed, absent a decision by this Court, the lower state court decision from Michigan could add legitimacy to even further curtailments to the right. The consequence may be the complete denial of the bearing of a gun as an arm thus denying society the positive benefits of an armed citizenry and a constitutional crisis. Simply, this is the sort of case that this Court should unquestionably hear.

II. Review Is Warranted Because the RKBA Warranted Substantive Review and More Than a Rational Basis Scrutiny.

The "Strict Scrutiny" standard of review is applicable because of one or all of A) the fundamental right to bear arms was an element in the license; B) the discrimination against a person who openly carries a pistol is "invidious"; C) the citizen who desires to bear a weapon for a constitutionally protected reason is itself a protected class; D) the RKBA is being regulated in a public forum; and E) licensing discriminates against a suspect classification (the poor and non-law enforcement persons). And, finally for a single reason, because the RKBA is a fundamental right and restrictions can not be for other than compelling state interests that don't violate the safe-society doctrine.

Strict Scrutiny must be applied in cases of explicit Constitutional rights, in which the bearing of an arm for defense of the state or self is under review. Chief Justice J.

Powell stated that Strict Scrutiny,[20] "...this exacting standard of review has been reserved for instances in which a 'fundamental' constitutional right ... is present...."

The Petitioner asked the Court of Appeals to determine if the bearing of an arm for self-defense was a constitutional question and was it restricted to just hunting and target and business and banking purposes and gun-free zones and expirations and fees and fingerprinting. Instead, they used a substandard review and have upheld a highly suspect practice of the legislature to delegate the police power of the state to a board comprised of primarily law-enforcement persons to oversee the process of granting permission to bear a pistol for security of self and state, which far exceeded its mandate to keep felons and the mentally deranged from bearing a concealed pistol. The first amendment as do others of the first eight as well as elements of the 14th all enjoy strict scrutiny and de novo reviews where rights are dramatically impacted, why not the Second?

In order to satisfy strict scrutiny, a law must be neither vague nor substantially over- or underinclusive. (See Schad v. Mount Ephraim (1981) 452 U.S. 61, 71-74 [68 L.Ed.2d 671, 682-684]; City of Indio v. Arroyo (1983) 143 Cal.App.3d 151, 157.) It must further an overriding state interest yet be drawn with narrow specificity to avoid any unnecessary intrusion on First Amendment rights. (McIntyre v. Ohio Elections Com., supra, 514 U.S. at p. [131 L.Ed.2d at p. 440]; H-CHH Associates v. Citizens for Representative Government (1987) 193 Cal.App.3d 1193, 1207.)

"[i]t is only when there exists a real and appreciable impact on, or a significant interference with the exercise of the fundamental right that the strict scrutiny doctrine will be applied. [Citations.]" (Fair Political Practices Com. v. Superior Court (1979) 25 Cal.3d 33, 47.) A failure to re-

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[20] Plyler v. Doe, 457 U.S. 202 (1982) , POWELL, J., Concurring Opinion

view restrictions on licenses is avoiding a look at the significant interference. The license permits and encourages a state to considerably impact the right because the underlying restrictions don't get reviewed. What appears ok on the surface is salted with unconstitutional restrictions, fees, delays, and civil right violations (fingerprinting to exercise a Right, restricted licenses, etc., and see App. U). This is inconsistent with other rights of the US Constitution to include Freedom of Speech, Religion, Assembly, Voting, and others. Why the US 2nd Amendment would not be construed to apply to a state that can check that right on no more than an abuse of discretion and rational basis review is perplexing?

"The framers of the Bill of Rights consistently used the words 'right of the people' to peaceably assemble, and the 'right of the people' against unreasonable searches and seizures."[21] This Court recently interpreted the text of the Second Amendment and noted that the phrase "the people" in the Second Amendment has the same meaning in both the Preamble to the Constitution and the First, Fourth, Fifth, and Ninth Amendments.[22] The Amendments of the Bill of Rights should be read in *pan materia*, and Amendments which contain similar language should be construed similarly.[23] Instead of determining if the Petitioner's questions had merit as a constitutional question, the state Appellate court concluded that the Petitioner failed to prove he had a fundamental right or that the bearing of a pistol in self-defense was a fundamental right. Yet, the Petitioner briefed the court that the matter dealt with a pistol, which is a constitutionally protected weapon,[24] carried for the security of the person or state, and that he was a citizen eligible for the other rights of the constitution mentioned above (what he called the full-time

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[21] Constitution and Subcommittee on the Constitution, ibid.

[22] United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990)

[23] Patton v. United States, 281 U.S. 276, 298 (1930)

[24] State v. Kessler,supra.

right). From this, he claimed the matter pertained to the fundamental right to bear an arm and warranted a de novo review and any restrictions warranted the strictest scrutiny.

"In a public forum, by definition, all parties have a constitutional right of access and the State must demonstrate compelling reasons for restricting access . . ."[25]

What did it matter that he had access if his questions didn't receive the proper review and scrutiny? He had to prove he had the rights or they wouldn't consider them. This is an absurd twist of logic used in a summary disposition case.[26]

The openly worn pistol becomes a vexatious label by which to pay lip service to the citizen's rights; yet, prevents the citizenry from exercising it by taking away the manner to hide the label and make it impossible to transport it or be protected by the right without the license.

Invidious Discrimination. Section 391 et seq invidiously discriminates against so-called "vexatious litigants". The label "vexatious litigant" is clearly a mark of discredit — a stigma. The word "vexatious" has been said to mean the same thing as "malicious". See 92 C.J.S., s.v. "Vexatious". The public branding of an individual implicates interests cognizable as either "liberty" or "property". Jenkins v.McKeithen (1969) 395 U.S. 411, Where the State attaches "a badge of infamy" to the citizen, due process comes into play. See Wieman v. Updegraff (1952) 344 U.S. 183,192.

Government action need not amount to a total ban on concerted activity before giving rise to heightened scrutiny. In Meyer v. Grant, 486 U.S. 414 [100 L.Ed.2d 425], state legislation prohibited the use of paid signature gath-

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[25] Perry Educations Assn. v. Perry Local Educators Assn (1983) 460 US 27,55 (1983)

[26] MI Court of Appeals, order dated 31 January 03. "In sum, plaintiff failed to establish that he had a constitutional, absolute, or fundamental right to carry a concealed pistol.

erers for qualifying an initiative measure. The court applied strict scrutiny despite the fact the legislation did not preclude the use of independent signature gatherers (providing they were not paid for their services) or the gathering of signatures. It was enough that the legislation placed a more than incidental burden on protected activity.

In this matter, the legislature made the bearing of guns dependent on licensing (a pistol is the only gun a citizen can use for security in daily course of affairs, not a rifle, not a shotgun). Because of the vexatious labeling[27] of bearing an open gun and because it was a felony to transport a pistol without a license, a license became essential to the bearing of a gun in one's daily affairs. The state tribunals failed to review the license's restrictions for what they were -- an unconstitutional restriction on the bearing of an arm and then left the Petitioner at the will of a board of mostly law enforcement officers to decide if he needed the right. The Petitioner was eventually issued a license, he was therefore qualified for the right, but it was restricted because these officers decided the right needed to be restricted for no reason other than they felt an armed citizenry was dangerous to society, which directly contravened the right (see App Q, page 78).

The Petitioner proved to the Respondent that questions asked revolved around a citizen, an arm, and a constitutionally protected reason. State v Kessler[28] provided guidance on this by looking at the elements of case that would receive constitutional protection. It broke down the review into three key rudiments:

"The language of this provision raises several questions in this case, including:

(a) To whom does the right belong?

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[27] [Note: The actions for which a "vexatious" label may be affixed need not be malicious or truly "vexatious" in any way. "A State cannot foreclose the exercise of constitutional rights by mere labels." (NAACP v. Button 371 U.S. 415,429).]

[28] State v Kessler, supra.

(b) What is the meaning of "defense of themselves"?

(c) What is the meaning of "arms," and what, if any, weapons of current usage are included in this term?"

This showed that the Oregon court recognized the elements in a case on the RKBA. The Petitioner broke his argument into the same analysis, but because the state courts and tribunals used an abuse of discretion review and rational basis of scrutiny and summary disposition standards, the elements never got reviewed. The People of the State of Michigan and of the United States, just as the Oregon people had a right to know, if restrictions of licenses or if licenses themselves warranted substantive review. Without such review, any restriction or any license would supplant a mere administrative privilege. In the case of the Petitioner, the state courts and tribunals were shown that an arm was involved in their charter and that a citizen and constitutionally protected reason were affected. They failed to do a substantive review.

III. Review is Warranted Because Infringements of Licensing and Associated with Licensing are a Constitutionally Suspect Practice

The licensing the bearing of an arm discriminates against the poor because of the expense of entry amounting to over $300. "Suspect Classification. Sec. §391 et seq. discriminates against poor people who cannot afford attorneys' fees to litigate civil or probate matters. The Supreme Court has overturned laws because of their impact on the poor. See Boddie, supra at 389."[29]

It is a suspect practice because a license denotes a grant of privilege, because it subjects the citizen to prequalification for a right and involves applications, delays, fingerprinting, and an interview by a board of law enforcement officers prior to exercising the right. The right

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[29] BODDIE v. CONNECTICUT 401 U.S. 371; 91 S. Ct. 780; 1971 U.S. LEXIS 73; 28 L. Ed. 2d 113 (1971)

does not need approval to be exercised, nor should it subject the citizen to fingerprinting, interviews by law enforcement officers, background investigations that violates the citizens privacy and subjects them to indignities that can never be justified by a compelling state interest. Weapons are dangerous by nature, that is their essence and why they serve the security of a free state. The license's purpose was to make citizens suspect or even arrestable for not having a license, if caught with a pistol. The license became the right. Without a license, even if one weren't a criminal or mentally ill, cne would become a criminal for not having a license if caught with a gun.They didn't prove in advance they weren't criminal or violent. Since when was a license an element of citizenship? It is not. The states have not considered or used other means to control felons from carrying a pistol. Instead the state maintained a highly suspect practice that first began as a "Sullivan law" initiated in the 1920's to keep the poor, the Afro-American and Irish from carrying a pistol (the discriminatory effect of licensing).

Each MI County handled the license differently and each license was different (App. R, pg. 80 *infra.*). The license is open to State abuse of Police Power and is proven by this case in which the Petitioner has sued the Respondent through all state Courts and into this Court and has lost his license because it expired. His income has been drastically reduced and can't even afford the training or the fees of the new license and still adjudicate this case and send his children to college. He is attempting to get the restrictions off his original license. While doing so, the Michigan legislature passed and applied even more restrictions upon the only restriction he had. Then the Courts failed to review these restrictions. How these policies and practice ever pass Constitutional muster, when there were already laws on the books to arrest felons who carried a pistol and to arrest those who misuse a gun. To make one arrestable for failure to have a license when they are not felons or proven violent is simply unconstitutional.

The Michigan Constitution and the US Constitution provided for an individual right to bear arms. The State does have an interest in keeping those who are felons or a proven danger to society from bearing a pistol. But, to anticipate the misuse of a weapon based on the determination of a board of primarily law enforcement officers or to have such a board (or the legislature) to issue restrictions to the bearing of weapon based on subjective judgment, no matter how well intentioned is simply not the constitutional way to achieve a compelling state interest. Nor, is the practice of licensing a proper state interest if that licensing fails to follow the precepts of constitutional muster that are the hallmark of American jurisprudence. The RKBA is a limitation on all governments, to not impose restrictions on citizens when there is not a proven threat or that person is not a felon. When the right is restricted, it must be for the most compelling of state interests and due process and equal protection must be strictly conformed to. Without such standards, the right to bear arms was relegated to lip service to a principal that started this country — when all else has failed we have a right to defends ourselves, our state, and country against the evils that liberty is constantly on alert against. This is a matter of greatest State and National importance and is not to be taken any less seriously now than it was when the Amendment was unanimously put into the Bill of Rights – for those who forget history are doomed to repeat it.

IV. Review is Warranted Because the Respondent and the State Courts Hid Behind Standards of Summary and Fairness but Disregarded the Constitutional Questions Requiring Substantive Review

The principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported [477 U.S. 317, 324] claims or defenses in cases where the facts would support a trial. The Michigan tribunals failed to review constitutional questions in summary and in Writ, or to place the constitutional questions into a proper forum for

review. The lower courts ruled under both summary judgment and Writ of Superintending Control such that the Petitioner failed to support his contentions of Constitutional repugnancy based on a lack of material facts or evidence and an "abuse-of-discretion" review. Yet, the entire record was submitted under a Writ of Superintending Control regarding multiple counts of Constitutional repugnancy. Both courts had these records, discovery evidence, affidavits, letters, and board materials and most importantly scholarly material on the right to bear arms – an area of law that lacked sufficient judicial guidance offering a final authority or determination.

There was no trial court. The Respondent was not a proper forum to decide who bears a pistol. Both lower Courts failed to review the facts, admissions, affidavits scholarly works, and records against the standard of law (of which the Constitution is the highest standard of the law) *de novo* as was their duty. De novo review is essential if the appellate courts are to maintain control of and clarify legal principles, especially in matters of constitutional determinations. A heightened review standard was essential because the Petitioner claimed that his constitutional rights guaranteed by two constitutions were violated and because Michigan Court Rules require constitutional issues be reviewed de novo.[30]

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[30] Even so, the Court of Appeals final words of judgment as expressed below...Therefore, the trial court properly dismissed plaintiff's complaint for superintending control because there was no genuine issue of material fact that plaintiff was not entitled to an unrestricted license to carry a concealed pistol.... ignore the fact, the Plaintiff/Petitioner asked the court to make a determination of Constitutionality regarding the merits of his case on very specific counts and questions. The Court sidestepped all of these questions per above by treating a superintending control as it were that and a motion for summary and avoiding a de novo review that would have brought the Constitutionality question to light. In essence, they ruled that it is ok to restrict the right because there was no abuse of discretion, when the abuse of discretion is just one of the Constitutional repugnancies that they failed to review.

The burden of proof in Summary Disposition and in Writ of Superintending control fell to the Respondent to prove the compelling state interest *de novo* as to why they limited access to a pistol commonly used for self-defense by law abiding citizens (and if it even had the power to impose such restrictions or if the legislature had the power to create this law and why they restricted the Petitioner's right to hunting, target, and business, and banking purposes and why the state later limited his right even further with gun-free zones, higher fees, misdemeant exclusion, and expiration, and so forth. Plus, in opposing a motion for summary disposition, a party may not rest upon the mere allegations or denials of his pleadings, but must by affidavits or otherwise set forth specific facts showing that there is a genuine issue for trial.... The Petitioner's constitutional right to bear arms, his civil right was harmed by the application of Michigan Court Rules regarding summary disposition and superintending control. They failed to balance interests and adherence to constitutional principals standing over court rules and administrative privileges. In short, all failed to review how the right to bear arms was affected by the practical application of MI laws. As such, they held court rules, the principal of "abuse of discretion" and administrative privilege of the Respondent and circuit court over an impartial de novo review of the whole record and Constitutional repugnancies. The Appellate Judgment came out six business days past the hearing date

Summary Disposition must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided the rules, prior to trial, that the claims and defenses have no factual basis. [477 U.S. 317, 328]. The Writ and Summary questions depended on the *de novo* review of the on the basis of the right in order to determine if the Petitioner's rights were

violated. This *de novo* review was not done, not even at the trial level, since there was no trial -- only a biased board of mostly law enforcement officers. Under de novo review, a court gives no deference to the trial court and views the case with fresh eyes. Fletcher v Fletcher, 200 Mich App 505; 504 NW2d 684 aff'd in part, rev'd in part 447 Mich 889; 526 NW2d 889 (1994)

Constitutional issues are reviewed de novo on appeal. Hanlon v Civil Service Commission Opinion COA# 232208 Release November 5, 2002. This misuse of the summary and extraordinary Writ by the Michigan tribunals whereby it protected the abuse of discretion over a case that clearly had fundamental constitutional questions and prevented them from seeing the light of day, is just the sort of matter this court should review. Otherwise, the judicial system is too complex to allow any pro se litigant to prevail in any constitutional challenge.

V. Review Is Warranted Because Michigan Court of Appeal's Decisio Conflicted with this Court's And Constitutional principals (the Michigan Tribunals Violated the Petitioner's Civil Rights by Failing to Provide a Post-deprivation Remedy)

"The Bill of Rights must be read in conjunction with the Constitution as an integrated whole. The seven articles comprising the main body of the Constitution establish a form of government and grant that government certain powers to effectuate governance of the United States. The first ten amendments, however, recognize the possibility of abuses against individuals by the government the Constitution established; thus, certain individual rights are guaranteed and protected. The fact that one of those protected and guaranteed rights, the right to keep and bear arms, is joined with language expressing one of its purposes or goals, in no way permits a construction which limits or confines the exercise of that right. To hold otherwise is to violate the principle that the guarantees and protections of the Bill of Rights must be interpreted to

give liberty the broadest possible scope and further to turn a blind eye toward the common law and history of the adoption of the Second Amendment...."[31]

The above applied to a State and Federal constitutional guarantee, especially in that a state court failed to properly review it to a higher standard than this court would likely find appropriate. It did not look at the repugnant restrictions of a license, therefore, escaped judicial review. If the state can issue licenses that control explicit constitutional rights and then not look at the restrictions attached to the right with a de novo review and the compelling interest of the state for said restrictions and requirements, then there is no constitutional right. This concept of licensing is a 20th and 21st Century phenomena that wasn't conceived of or part of founders' intent.

For example, the licensing power was granted by the Michigan Legislature to a board of primarily law enforcement officers. They then abused a vague standard called the "good reason to fear" standard that the Michigan Appellate Court upheld as a proper standard. From this standard the Respondent exploited the concept of the restricted v unrestricted license. Not only did they restrict the license unequally, they also established a quasi-pseudo class of retired police officers and judges – showing great bias towards their own class – a class that represented the police power. To all others they granted the most restricted license they could justify based on individual requirements of the person for self-defense. As an example, if one said to the Respondent, I need a license for self-defense, they would in an interview ask why? In response, if the person said, because when I go to my aunt's house on weekends in Detroit, the Respondent would issue a license restricted to going to and from the aunt's house just

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[31] *Report of the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, 97th Cong., 2d Sess., The Right to Keep and Bear Arms, 83-109 (1982)* ("Other Views"). Reproduced in the 1982 Senate Report, pg. 83-109

on weekends and also for hunting and target. If one didn't go before them, they would issue only a "hunting and target" CCW license, which, if used for that purpose, would still have required a hunting license. The Petitioner presented all this in the original records to the Circuit Court and to the Respondent. None of it was considered in any Court nor was it found to violate due process or equal protection of either the State of Michigan Constitution or the Federal equal protection clause. This written policy and practice, using the color of law, to deprive a citizen of his uninifringed right to bear an arm for security of self and state clearly violated 42 USC 1983, the US Civil Rights Act. (See App. U, pg. 96-111).

VI. Review is warranted as the Second Amendment is an Individual Right and Applies to the States

The Petitioner invokes the text of the Right to Keep and Bear Arms, the report on the Judiciary of the 97th Congress[32] as an element of his argument. What better source than the US Congress to guide the high Court in their review of this special right. This right is the palladium of freedom, a beacon for all nations. See also, Emerson v United States[33] for treatment of the US 2nd Amendment as an individual right. The individual right will be presumed a priori in this brief. What is at issue is the level of review and scrutiny (and the act of licensing itself) that said right should warrant at the state and federal level based on other explicit rights surrounding that right in the both a State and Federal Bill of Rights.

The following passage taken from Nunn v State, 1 Ga. 243, 250-51 (1846) sheds light on this dilemma:

"The language of the second amendment is broad enough to embrace both Federal and State governments – nor is there anything in its terms which restricts its meaning.

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[32] Ibid.

[33] US v Emerson, 270 F.3d 203, ***(5th Cir 2001), cert denied, 122 S Ct 2362 (2002)

The preamble which was prefixed to these amendments shows, that they originated in the fear that the powers of the general government were not sufficiently limited.... Is it not an unalienable right, which lies at the bottom of every free government? We do not believe that, because the people withheld this arbitrary power of disenfranchisement from Congress, they ever intended to confer it on the local legislatures. This right is too dear to be confided to a republican legislature."

"... If a well-regulated militia is necessary to the security of the State of Georgia and of the United States, is it competent for the General Assembly to take away this security by disarming the people? What advantage would it be to tie up the hands of the national legislature, if it were in the power of the States to destroy this bulwark of defense?"

Ralph Rohner stated[34]:

"...It is therefore likely that, if the second amendment is incorporated into the fourteenth, its protection will extend to all state action, be it judicial, legislative, or executive, under the rationale of Shelley v Kraemer[35] and its progeny."

"... In the meantime any state gun control restrictions would have to be reconcilable with existing state constitutional provisions. Where those provisions encompass (or appear to encompass) purpose broader than militia readiness, any proposed legislation must be evaluated accordingly. For example, while it is not suggested that these cases are generally controlling today, several courts have held gun control statutes unconstitutional in the past: in Nunn v State, the Georgia court invalidated that

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[34] The Right to Bear Arms: A Phenomenon of Constitutional History, Catholic University of America Law Review, 16 (1966):53.

[35] 334 US 1, 20 (1948): "State action, as that phrase, is understood for the purposes of the Fourteenth Amendment, refers to exertions of state powers in all forms."

portion of a statute which prohibited carrying weapons openly; In re Brickey36 held that the legislature could not prohibit the mere carrying of weapons by private persons within city limits; in Andrews v State the Tennessee court struck down that portion of a deadly weapons statute which proscribed the carrying of "pistols" since those weapons could be "arms" in the military sense...."

Any time, place, or purpose restrictions and a license would therefore define the limitations of that right. The license became the proxy for or the definition of the right to bear a pistol, an arm. But the real issue for this court may be whether the right applies to the state and then what level of scrutiny to apply. Clearly the State of Michigan guarantee is more specific than the Federal guarantee. It is unusual that a State would not apply de novo reviews and strict scrutiny to a State guaranteed right. This state bias towards restrictions to a license that controls the bearing of a weapon forced the Petitioner to appeal to the US Supreme Court asking it to force the lower courts to give higher credence to its own Constitutional guarantees. So, even though the guarantee is more specific, if the State fails to apply the proper review and look at specific questions, the right is impotent, if it doesn't protect the bearing of a common gun for a constitutional reason, which they failed to do. So does the right apply to the States, otherwise the State can eschew the application of a Federal guaranteed right, which it has.

If the license becomes the shield of the Police Power, then any restriction could be placed on a license and no constitutional question would ever warrant review of a restriction on a license. That is why the license itself is constitutionally suspect. If the Cruikshank, supra., et al decisions and the state court denials of the 2nd Amendment applying to the state prevail, then each state is free to apply what level the RKBA will play in each case -- each state

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[36] 8 Idaho 597, 70 Pac. 609, 101 Am. St. Rep. 215 (1902)

with a different standard and each State with a different restriction. These are the kind of issues this court should review decide for the People the proper application of the RKBA for the state of Michigan and the Country.

So not only does the RKBA have substantial precedence in our Nation's history, but it is clearly an individual right and applies to the State. Licensing is either unconstitutional or can only have restrictions and requirements that are compelling and that don't violate the safe-society doctrine (basis) of the right itself. The Respondent or the laws under which the Respondent acted clearly created restrictions to the right through licensing or license law violated and infringed the right or both. "When a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest. [Citation.]" (514 U.S. at p._ [131 L.Ed.2d at p. 440].) So it should be for the RKBA.

CONCLUSION

The State of Michigan from the Petitioner, through the legislature, to the Courts, have followed policies and practices, created laws, and ruled on matters related to the bearing of arms in a manner that does not apply the 2nd Amendment or a level of review and scrutiny to said right that this court is likely to find appropriate, as such the Petitioner asks the Court to grant his Petition for Certiorari. The People have a right to know if the RKBA applies to the states and what standards to apply in protecting it.

Stephen Hickel, Petitioner in Pro Per
X_____
Dated: July 12, 2003